IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4731 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4731 of 1994

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 28/04/2005

ORAL JUDGEMENT

1. The short facts of the case are that the petitioner

was granted land as per the order dtd.18.09.1974 admeasuring 9790 sq mtr bearing survey no.111 of the waste land at Village Madhapar for oil mill and ginning mill. It appears that there was some change in the partnership and the proceedings were initiated for breach of the condition. Ultimately, it was held by the Collector that there is no breach of the condition and the notice was withdrawn. It appears that, as per the petitioner since it was not possible to continue with the activitiy of Ginning Mill, which was in addition to Oil Mill, the activity of manufacturing Badami Coal was undertaken and as per the petitioner the application was also made by giving intimation and granting permission for such purpose but no reply was given by the Authority in this regard. In the meantime, once again the notice came to be isused for breach of the condition on two grounds, one was that there was change in the partnership firm and the another was that the portion of the land is used for manufacturing for Badami Coal. The proceedings initially resulted into forfeiture of the land and thereafter the matter was carried before the Revenue Tribunal and the matter was remanded. Thereafter, the District Collector once again considered the matter and as per the order dtd.26th March, 1987, the District Collector found that as earlier for change of the partnership firm the show cause notice was already withdrawn, the proceedings cannot be initiated for the second time for the same cause. So far as the change of use is concerned, the District Collector found that the land is used for industrial purpose and the Government has also granted exemption for ULC and there is a policy of the Government to encourage to industry, and, therefore, it would be just and proper to withdraw the notice and ultimately notice came to be withdrawn. It appears that the matter was taken up for revision suo-motu by the State Government and it was found by the State Government that by change of partnership firm there is indirect breach of the condition and there is change of use without prior permission, and, therefore, as there is breach of the condition the order is passed by the State Government for termination of the grant and the land is ordered to be forfeited. It is under these circumstances, the petitioner has approached to this Court by preferring this petition.

3. Heard Mr.Shah, the learned Counsel appearing for the petitioner and Mr.Prachhak, learned A.G.P. for the respondent authorities.

4. Mr.Shah, the learned Counsel appearing for the petitioner submitted that even as on today, the land is

used for Oil Mill and for manufacturing of Badami Coal, and, therefore, the land is as such used for industrial purpose. He submitted that for the ground for change of partnership, once the notice having been dropped earlier, it was not open for the Government to initiate the proceedings on the same ground and he submitted that it is not a case where the original partners are not there at all in the partnership firm, but some partners are added is only the change. He also submitted that so far as the change of use is concerned, the intiation and the application was made but the same was not responded to and the said averments made in the petition at Grounds (I) at Para-13 is not controverted. He also submitted that in any case the authority ought not to have passed the order of forefeiture of the land and could have considered the matter for imposition of suitable penalty.

4. Mr.Prachhak, learned A.G.P. has supported the order passed by the State Government. Howeve, on the aspects of penalty Mr.Prachhak, learned A.G.P. is not in a position to oppose the contention as to why the authority has not considered the question of penalty and the harsh action of forefeiture of the land is taken.

5. As such the perusal of the impugned order shows that the same is mainly on two grounds. One is that there is a change in the partnership firm and the another is that there is a change of use of the land in part from Ginning Mill to manufacturing of Badami Coal. So far as the first ground is concerned, Mr.Shah, the learned Counsel for the petitioner appears to be right in contending that once the proceedings came to be dropped for the change of partnership firm, the proceedings could not have been initiated for the allged breach for the same cause. The observations made in the impugned order passed by the State Government are that very purpose would be frustrated if the persons to whom the land are allotted would be changed and there is indirect personal of the assessts. The partnership firm is not a legal entity in the eye of law and it is not a case where the persons who were partner at the relevant point of time when the land came to be allotted are no more continued as the partner. Further, as per the petitioner they belong to one family. In any case, when for the same ground earlier the proceedings came to be initiated and were dropped and, therefore, it appears that the State Government could not have initiated the proceedings for breach of the condition for ground, for the same cause.

6. As regards the use of the land in question for manufacturing of Badami Coal is concerned, as per the

petitioner the application was made and intimation was given which was not attended. But, it appears that, the land is used for the other industrial purpose. When the land is used for the industrial purpose, though it can be said as breach, such breach, in my view, cannot be said to be so serious which may attract the order of forfeiture, and the reason being that the land is not only used for the other industry, but by establishment of the indsutry, the employment will be generated to the public at large. Had it been a case where the land is used for a industry which is prohibited under the law it may stand on different footing. Had it been a case where the land is not acutally used by the establishment of the industry it may also stand on different footing. When the intimation was given and the application was made, it was expected for the authority to consider the same and in any case when the land is actually used for industry and even as on today is used for the industry, and there is no material to show that by change of use for a different industry either the public at large has suffered or the interest of the Government would be to jeopardize, it would not be a case where the harsh action of forfeiture of the land is called for. Even otherwise also in a matter where there is a breach of condition, the descretion would rest with the authority as to whether the penalty should be imposed or the land should be ordered to be forfeited. In the present case, it appears that, the State Government while exercising revisional jurisdiction has not at all considered the aspect as to whether penalty would meet with the ends of the justice or a strong case is made out for ordering forfeiture. In normal circumstances if the breach of condition has resulted into a serious loss of revenue to the Government or is against the public interest or against any statutory provisions, it may call for harsh action of forfeiture, but if the penalty can be a suitable mode, then in that case, it cannot be said that in every case the order of forefeiture must follow in the event the breach is demonstrated. What shall be the quantum of penalty or the mode of imposition and its recovery are essentially for the authority to decide but it appears that when the Quashi Judicial powers are exercised by the State Government, it was required to be considered by the State Government as to whether the penalty would meet with the requirements consideing the breach or not.

7. In view of the aforesaid, the orde passed by the State Government dtd.06.12.1993 (ANNEXURE-B) for forfeiture of the land is quashed and set aside with the direction to the State Government to reconsider the

matter on the aspects of imposition of suitable penalty for change of use from Ginning Mill to manufacturing of Badami Coal and others. The State Government shall passs the appropriate orders keeping in view of the aforesaid observations and after giving opportunity of hearing to the petitioner and in accordance with law as per the prevailing policy of the Government for such purpose, as early as possible preferably within period of 6 months from the receipt of the writ of this Court.

8. Petition is partly allowed to the aforesaid extent. Considering the facts and circumstances there shall be no order as to costs. Rule partly made absolute.

(JAYANT PATEL,J.)
27.04.2005
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